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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1992

LARRY ZOBREST, ET AL.,  
*Petitioners,*  
v.

CATALINA FOOTHILLS SCHOOL DISTRICT,  
*Respondent.*

ON WRIT OF *CERTIORARI* TO THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF *AMICUS CURIAE* OF  
ARIZONA SCHOOL BOARDS ASSOCIATION, INC.  
IN SUPPORT OF RESPONDENT

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## QUESTIONS PRESENTED

1. Whether the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* (1988 & Supp. III 1991), or its implementing regulations, require a state governmental agency to provide a sign-language interpreter to a deaf child in a sectarian school.
2. Whether the present controversy should be resolved by application of the three-part *Lemon* test.
3. Whether the Establishment Clause of the First Amendment bars a public school district from providing a sign-language interpreter to a deaf child at a sectarian school.

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BRIEF *AMICUS CURIAE* OF  
ARIZONA SCHOOL BOARDS ASSOCIATION, INC.  
IN SUPPORT OF RESPONDENT

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**INTEREST OF THE *AMICUS***

This brief is filed with consent of both parties. Letters of consent are on file with the Clerk of this Court.

Arizona School Boards Association, Inc. (ASBA), is an Arizona nonprofit corporation, the members of which are the governing boards of most of the 223 public school districts in the State of Arizona, including Respondent. ASBA's members, as local education agencies, are charged with the responsibility of providing special education and related services in accordance with the



## CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

ASBA adopts Petitioners' and Respondent's listing of constitutional and statutory provisions involved in this matter.

## STATEMENT OF THE CASE

ASBA incorporates by reference the statement of the case contained in the brief of Respondent Catalina Foothills School District ("Catalina Foothills").

## SUMMARY OF THE ARGUMENT

The Court of Appeals for the Ninth Circuit has correctly affirmed the judgment of the District Court by holding that the Establishment Clause bars a public school district from providing a sign-language interpreter to a deaf child at a sectarian school. In so ruling, however, neither the District Court nor the Court of Appeals reached the question of whether the governing statutory scheme, the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.*, and its implementing regulations, require a state governmental agency to provide a sign-language interpreter to a deaf child in a sectarian school.

This present controversy can and should be resolved by application of the three-part *Lemon* test. This Court should conclude, as a result, that the Establishment Clause bars a public school district from providing a sign-language interpreter to a deaf child at a sectarian school.

## ARGUMENT

### I. NEITHER THE IDEA NOR ITS IMPLEMENTING REGULATIONS REQUIRE CATALINA FOOTHILLS TO PROVIDE AN INTERPRETER TO A DEAF CHILD IN A SECTARIAN SCHOOL

Petitioners Zobrest claim in their reply to brief in opposition to the petition that the IDEA requires Catalina Foothills to provide an interpreter to a deaf child in a sectarian high school and that this legal conclusion was adopted by the courts below. (R. Br. Op. 1)<sup>1</sup>. These allegations, however, are incorrect in both respects.

#### A. IDEA does not require a local education agency to provide an interpreter to a deaf child in a sectarian school.

In 1970, Congress enacted the Education of the Handicapped Act, now known as the Individuals with Disabilities Education Act ("IDEA"). Congress provided in Subchapter II of the IDEA for a program of federal grants to aid state and local authorities in providing educational assistance for children with disabilities. See 20 U.S.C. §§ 1411-1420 (1988 & Supp. III 1991).

The fundamental requirement for obtaining a grant under the IDEA is that the State make available "a free appropriate public education for all children with disabilities" in the State. 20 U.S.C. § 1412(2)(B) (Supp. III 1991). Section 1413(a)(4) (1988 & Supp. III 1991) directly addresses the State's obligations with respect to children in private schools. If school authorities have selected the

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<sup>1</sup> "R. Br. Op." refers to the Reply to Brief in Opposition to Petition for Writ of *Certiorari*.

private school as the means of providing a "free appropriate public education" to the child, Section 1413(a)(4)(B) (Supp. III 1991) requires the State to provide the appropriate services in all cases "at no cost to \* \* \* parents or guardian." With respect to children placed by their parents in private schools after rejecting an appropriate public school placement, the public agency need only make provision for the participation of such children in the appropriate special education or related service. Section 1413(a)(4)(A) (Supp. III 1991).

This statutory direction is explained more fully in the regulations which implement the grant program established by the IDEA. See 34 C.F.R. Pt. 300. Section 300.403(a) provides that when children with disabilities are placed in a private school by their parents' choice "the public agency is not required by this part to pay for the child's education at the private school or facility." Instead, the agency is required only to "make services available to the child as provided under §§ 300.450-300.452." Section 300.452, in turn, provides that the agency "shall provide special education and related services designed to meet the needs of private school children with disabilities residing in the jurisdiction of the agency."

The meaning of this requirement is clarified by the provisions of 34 C.F.R. §§ 76.651-76.662, which establish general regulations for participation by private school students in the various grant programs administered by the Department of Education. Those regulations require the agency to "provide students enrolled in private schools with a genuine opportunity for equitable participation [in the programs offered by the agency to other students]." Section 76.651(a)(1). Benefits provided to students in private schools must "be comparable in quality, scope, and opportunity for participation to the program benefits that the [agency] provides for students enrolled in public schools. Section 76.654(a). Where "necessary to provide equitable program benefits" that are "not normally provided by the private school," the agency "may use program funds to make public personnel available" in the private school's facilities. Section 76.659.

The direction to provide or make available the special program or service, of course, does not translate into a mandatory requirement to provide and make available the program or service on the premises of a private school. The provision and availability of the service can easily be accomplished by offering the service at a free public school. Indeed, these statutes and regulations make clear that, while the IDEA allows a public agency to provide the services of an interpreter at a private school, it is not required to do so unless placement of the child at a private school has been selected by public school authorities as the means by which to educate the child. See *Goodall by Goodall v. Stafford County School Board*, 930 F.2d 363 (4th Cir.), *cert. denied*, \_\_\_ U.S. \_\_\_, 112 S. Ct. 2649 (1991); *McNair v. Cardimone*, 676 F. Supp. 1361 (S.D. Ohio 1987), *aff'd*, *McNair v. Oak Hills Local Sch. Dist.*, 872 F.2d 153 (6th Cir. 1989); *Work v. McKenzie*, 661 F. Supp. 225 (D.D.C. 1987).

Indeed, the unresolved legal question is not whether the IDEA requires a public agency to provide interpretive services, but whether such services are prohibited in this context. The Education Department General Regulations (EDGAR) specify that:

1. No State or subgrantee may use its grant or subgrant to pay for any of the following:
  - a. Religious worship, instruction, or proselytization.
  - b. Equipment or supplies to be used for any of the activities [described above.]

34 C.F.R. § 76.532(a)(1). The United States, as *amicus curiae*, has contended that this provision is intended to reach no farther than the Establishment Clause of the First Amendment. See Brief for the United States as *Amicus Curiae* Supporting the Petitioners, p. 23. But the United States Court of Appeals for the Fourth Circuit has interpreted and applied this provision without reference to the Establishment Clause and, under a set of facts that were substantially



the same as those of this case, held that this provision prohibits the delivery of cued speech interpretive services at a sectarian school. *Goodall*, 930 F.2d at 369.

The resolution of this legal issue will also require a determination as to whether delivery of interpretive services at a sectarian school would violate the Arizona Constitution. Article 2, Section 12 of the Arizona Constitution states:

No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or to the support of any religious establishment.

Arizona's Attorney General has opined that the provision of interpretive services under the circumstances of this case would violate the Arizona Constitution. (J.A. 9-18)<sup>2</sup> The Attorney General's analysis appears to assume that the reach of Article 2, Section 12 of the Arizona Constitution is the same as that of the Establishment Clause of the First Amendment, but the Arizona courts have not endorsed this analysis. To the contrary, the broader and more specific prohibitions expressed in Article 2, Section 12 of the Arizona Constitution suggest that this provision has a greater scope than that of the Establishment Clause.<sup>3</sup> Indeed, the then Vice Chief Justice of the Arizona Supreme Court (now, Chief Justice) has stated

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<sup>2</sup> "J.A." refers to the Joint Appendix.

<sup>3</sup> In *Witters v. Washington Department of Services for the Blind*, 474 U.S. 481 (1986), this Court ruled that financial assistance paid directly to a blind recipient under a state vocational rehabilitation program did not violate the First Amendment. This Court remanded the matter to the state courts for a determination as to whether the financial assistance would violate Article 1, Section 11 of the Washington State Constitution, a provision which is similar to Article 2, Section 12 of the Arizona Constitution. On remand, the Washington Supreme Court concluded that the financial assistance did violate its State Constitution. *Witters v. State Commission for the Blind*, 112 Wash.2d 363, 771 P.2d 1119, cert. denied, 493 U.S. 850 (1989).

that the textual protections of the First Amendment in the United States Constitution are much narrower than the Arizona Constitution:

[O]ur constitutional framers not only adopted the suggestions from Congress, they went much farther in delineating the proper scope of church and state interaction, banning public support of sectarian schools and prohibiting sectarian instruction at state schools. Under the first amendment's establishment clause, the United States Supreme Court has allowed the limited use of public funds for support of sectarian schools. For instance, the court upheld noncategorical grants to religious colleges and universities, reimbursing church-sponsored public schools for performing various testing and reporting services mandated by state law, loaning public textbooks to sectarian students, tax deductions for expenses incurred by taxpayers in sending their children to parochial schools and providing classes to sectarian students in public facilities on a "shared-time" basis. All of these direct and indirect aids to religious educational institutions would face a difficult examination under the broad, specific textual provisions of the Arizona Constitution. For instance, the prohibition against appropriating and applying public funds to property to support even a religious "exercise" refers to more than legislative appropriation: it includes executive and administrative contact.

Stanley G. Feldman & David L. Abney, The Double Security of Federalism: Protecting Individual Liberty Under The Arizona Constitution, 1988 Ariz. St. L.J. 115, 143-44 (footnotes omitted).



**B. The Courts below did not rule on the question of whether the IDEA requires Catalina Foothills to provide an interpreter to a deaf child at a sectarian school.**

Regardless of whether the legal issue is whether the IDEA requires, permits or prohibits the delivery of interpretive services to a deaf child at a sectarian school, a ruling on this legal issue was not made by the lower courts in this case. Zobrests claimed in their verified amended complaint that the IDEA required Catalina Foothills to provide an interpreter. (J.A. 21-22) This allegation was denied in Catalina Foothills' answer. (J.A. 55) In their stipulation of facts, the Zobrests and Catalina Foothills agreed only that Catalina Foothills "would be obligated under the [IDEA] to pay the cost of a certified sign-language interpreter for James Zobrest if he were enrolled in a local public high school." (J.A. 86) Upon cross-motions for summary judgment, the District Court ruled that:

Based upon the stipulated facts in the record it is clear that plaintiff James Zobrest requires the services of a sign language interpreter at Salpointe Catholic High School. However, the provision of a publicly-paid sign language interpreter at Salpointe, a pervasively sectarian school, would violate the separation of church and state.

There is no indication in the District Court's opinion that it concluded, as a preliminary matter leading to the constitutional basis for its ruling, that the IDEA required Catalina Foothills to provide James Zobrest with a sign-language interpreter at Salpointe Catholic High School. Rather than ruling on the statutory question, the District Court perhaps assumed, at least for the purposes of the cross-motions for summary judgment, that Catalina Foothills might voluntarily agree to provide an interpreter if it was not barred from doing so by the Federal or Arizona Constitutions. In any event, there is no indication that it considered the issue of whether the

IDEA required, as opposed to permits, the Catalina Foothills School District to provide an interpreter for James Zobrest.

In affirming the District Court's summary judgment, the Court of Appeals for the Ninth Circuit stated that it did not feel any need to rule on the statutory question because it believed that a stipulation of the parties permitted the Court to bypass the issue:

For the purposes of this litigation, the parties do not dispute that sign language interpretation is one of the "special education and related services" to which James is entitled. The parties agree that, if James' parents enrolled him in a non-sectarian private school or public school, the School District would be obligated to provide a sign language interpreter for him.

*Zobrest v. Catalina Foothills School District*, 963 F.2d 1190, 1192 n.1 (9th Cir. 1992). The problem here, however, is that there was no stipulation to the effect that a sign-language interpreter is a "special education related service" to which James would be entitled to receive in a private school. Rather, the only stipulation was that he was entitled to these services in a public school setting. (J.A. 88-89).

Regardless of whether the Ninth Circuit correctly or incorrectly characterized the disputed facts or the parties' stipulations, the unalterable fact is that neither the District Court nor the Ninth Circuit considered the merits of, or ruled on, the issue of whether the IDEA requires the placement of a sign-language interpreter in any setting other than a public school. Whether the School District voluntarily would have provided an interpreter is no longer of any concern. James Zobrest has graduated from school, and thus any issue as to voluntary provision of such services is moot. In addition, as described above, and as indicated in the Arizona Attorney General Opinion rendered on this very situation, (J.A. 9-18), the Arizona

Constitution would prohibit the School District from voluntarily providing services.<sup>4</sup>

The important point is that no court has yet addressed the issue of whether the IDEA requires the services at issue here to be provided. ASBA urges the Court to avoid any confusion regarding this point by clarifying in its opinion that the question as to whether the IDEA requires a public agency to provide an interpreter to a deaf child in a sectarian school has not yet been addressed. If the case is affirmed, there is no need to reach this issue. If the Court reverses on the constitutional issue, it should remand this case to the District Court to resolve the remaining issues in the case, including the issue as to the required, as opposed to permissive, application of the IDEA to the parochial school fact situation presented. In the alternative, this Court could dismiss the grant of *certiorari* as improvidently granted on the basis that the lower courts should have resolved the statutory issue before addressing the constitutional issue. See *Califano v. Yamasaki*, 422 U.S. 682, 692 (1979). This, perhaps, would be the desirable course of action to avoid completely the necessity of adjudicating the constitutional issue presented.

## II. THE PRESENT CONTROVERSY SHOULD BE RESOLVED BY APPLICATION OF THE THREE-PART LEMON TEST

The briefs filed by the Zobrests and Catalina Foothills indicate that both parties believe that the present controversy can and should be resolved by a straightforward application of the three-part inquiry recognized by this Court in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Various *amici* filing briefs in support of the Zobrests, however, have suggested that this Court should reexamine the use of the *Lemon* test in its Establishment Clause analysis. See, e.g., Brief of the United States as Amicus Curiae Supporting Petitioners, p. 15,

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<sup>4</sup> Note that Catalina Foothills determined that it would follow the dictates of the Attorney General Opinion. (J.A. 94).

n.11. While ASBA recognizes the concerns of some members of this Court regarding the difficulty in applying the *Lemon* test, see, e.g., *Aguilar v. Felton*, 473 U.S. 402, 429 (1985) (O'Connor, J., dissenting); *Edwards v. Aguillard*, 482 U.S. 578, 636 (1987) (Scalia, J., dissenting), ASBA urges this Court to continue to recognize the three-part approach — purpose, effect and entanglement — as the proper framework of analysis for determining whether government action impairs the objectives of the Establishment Clause.

The religious heritage of this country is extraordinarily diverse and becoming more so. Public education in America has remained relatively free of religious strife because of this Court's efforts to establish and maintain a set of standards that ensures a meaningful separation of church and state. If the Court in this case develops a "new test," that action assuredly will send out a message to schools, students, parents and communities throughout this country that all of the religion-in-the-schools cases are no longer "good law" or at least are questionable. Any serious move away from the strong stand this Court has held in the past to separate religion and the state will be a clarion call to those who are eager to establish religion in the schools. Schools will then face "successive opportunities for political fragmentation and division along religious lines, one of the principal evils against which the Establishment Clause was intended to protect."<sup>5</sup> *Meek v.*

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<sup>5</sup> Justice Powell's admonition about the risk of political divisiveness stemming from aid to religion is particularly appropriate:

Public schools, as well as private schools, are under increasing pressure to meet real and perceived needs. Thus, any proposal to extend direct governmental aid to parochial schools alone is likely to spark political disagreement from taxpayers who support the public schools, as well as from nonrecipient sectarian groups, who may fear that needed funds are being diverted from them. In short, aid to parochial schools of the sort at issue here potentially leads to "that kind and degree of government involvement in religious



*Pittenger*, 421 U.S. 349, 372 (1974); see also *Lemon v. Kurtzman*, 403 U.S. at 622-23.

### III. THE ESTABLISHMENT CLAUSE BARS A PUBLIC SCHOOL DISTRICT FROM PROVIDING AN INTERPRETER TO A DEAF CHILD AT A SECTARIAN SCHOOL

The employment by a public school district of a sign-language interpreter to accompany a student through all of his activities at a Catholic high school, including morning mass and religious classes, to interpret all communication that occurs in the student's presence, including prayers and other religious communication, violates the Establishment Clause of the First Amendment to the United States Constitution. Judged in light of the three-part *Lemon* test, provision of an interpreter under these circumstances would have the primary effect of advancing religion and would create excessive entanglement between church and state.

The sign-language interpreter's presence, at public expense, in a parochial high school would have the impermissible effect of advancing religion because the interpreter would benefit the religious-oriented educational function of the sectarian school, serve as a conduit for all religious communications to and from the student, and be used as a tool to facilitate religious interaction. See *Goodall by Goodall v. Stafford County School Board*, 930 F.2d at 370-71; see also *Meek v. Pittenger*, 421 U.S. at 366 (State aid in the form of instructional materials and equipment which "flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission . . . has the

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life that, as history teaches us, is apt to lead to strife and frequently strain a political system to the breaking point."

*Aguilar v. Felton*, 473 U.S. 402, 416-17 (1985) (quoting *Walz v. Tax Comm'n*, 397 U.S. 664, 694 (1970) (opinion of Harlan, J.))

impermissible primary effect of advancing religion," quoting *Hunt v. McNair*, 413 U.S. 734, 743 (1972)); *Wolman v. Walter*, 433 U.S. 229, 250 (1977) ("In view of the impossibility of separating the secular education function from the sectarian, the state aid [instructional materials and equipment] inevitably flows in part to support the religious role of the schools.").

The presence, furthermore, of a publicly paid employee in a parochial classroom, transmitting religious communications, would create an impermissible symbolic union between the government and the religious school. See *Goodall by Goodall v. Stafford County School Board*, 930 F.2d at 370-71; see also *Grand Rapids School Dist. v. Ball*, 473 U.S. 373, 392 (1985) (Remedial and supplementary programs conducted by public school employees on premises of parochial school creates an unacceptable "symbolic union of government and religion in one sectarian enterprise.") This Court has recognized "the danger that publicly employed personnel who provide [therapeutic] services . . . might transmit religious instruction and advance religious beliefs in their activities." *Wolman v. Walter*, 433 U.S. at 247. There is no question in this case that the interpreter, acting as a state employee, would transmit religious instruction in a sectarian school.

Zobrests try to defend this untenable situation by characterizing an educational interpreter as nothing more than a human hearing aid. This is simply at odds with reality. According to the National Task Force on Educational Interpreting:

The educational interpreter is a member of the educational team, and is relied upon by the teacher, the deaf student, and hearing peers, to relay information accurately and intelligibly both to and from the deaf students and others as needed. \* \* \* While interpreting is the educational interpreter's primary role, and the first order of priority, it may not be his or her only role.

(A-2)<sup>6</sup>. Educational interpreters may be called upon to perform a number of noninterpretive tasks, including tutoring and other routine classroom duties. (A-2). In addition, an "educational interpreter's responsibilities should include provisions for what might be called "educational planning" [,] . . . time that is set aside for the educational interpreter and teacher to discuss course content, lesson plans upcoming tests, etc." (A-8). Clearly, an educational interpreter is not a hearing aid but a teacher's aide, an education professional who, as part of an education team, is expected to master the curriculum, including its religious elements, and provide a supportive role to the teacher and deaf student.

Finally, the need for periodic evaluation by other public employees of the interpreter's performance, as well as the need for periodic review by the District of the suitability of the special education services provided to the student, would create excessive entanglements between the public and parochial enterprises. See *Aguilar v. Felton*, 473 U.S. 402, 413 (1985) ("We have long recognized that underlying the Establishment Clause is "the objective . . . to prevent, as far as possible, the intrusion of either church or state into the precincts of the other," quoting *Lemon v. Kurtzman*, 403 U.S. at 614).

### CONCLUSION

For all of the foregoing reasons, ASBA respectfully requests that this Court (1) clarify in its opinion that it will not address the legal issue of whether the IDEA requires a local education agency to provide an interpreter to a deaf child in a sectarian school, (2)

continue its support of the *Lemon* test in its Establishment Clause analysis, and (3) affirm the decision below.

Respectfully submitted,

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<sup>6</sup> "A" refers to the Appendix to this Brief.



# **EDUCATIONAL INTERPRETING FOR DEAF STUDENTS**

**Report of the National Task Force on  
Educational Interpreting**

## **Sponsoring Organizations**

American Society for Deaf Children  
Alexander Graham Bell Association for the Deaf  
Conference of Educational Administrators Serving the Deaf  
Conference of Interpreter Trainers  
Convention of American Instructors of the Deaf  
National Association of the Deaf  
Registry of Interpreters for the Deaf

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### III. ROLES AND RESPONSIBILITIES

#### Roles

The fundamental role of the interpreter, regardless of specialty or place of employment, is to facilitate communication between deaf persons and others. Educational interpreters facilitate communication between deaf students and others, including teachers, other service providers, and peers, within an educational environment, usually a mainstream or quasi-mainstream setting. The educational interpreter is a member of the educational team, and is relied on by the teacher, the deaf student, and hearing peers, to relay information accurately and intelligibly both to and from the deaf student and others as needed.

The usefulness of an interpreter presupposes that the deaf student has at least the foundation of a language system, be it English or a form of sign language. Unfortunately this is not always the case, particularly among young school-age children. Likewise the usefulness of an interpreter presupposes that he or she is qualified to interpret in a form used by the child. If a continuing situation occurs in which the deaf student is unable to profit from interpreting services, the presence of an educational interpreter may be a poor use of resources and the child's placement or the interpreter assignment should be re-examined. With young children it is common to use teachers' aides rather than educational interpreters in support roles.

At least one national professional organization recommends that where possible, deaf children interact directly with their teachers in the early grades when major attention is given to language acquisition. Consensus among educators of the deaf in support of educational interpreting increases as the deaf child progresses into the upper elementary level and beyond.

While interpreting is the educational interpreter's primary role, and the first order of priority, it may not be his or her only role. With appropriate training and skills, the role of the educational interpreter may extend into non-interpreting areas. These will be discussed under "Responsibilities."

The relative proportion of time spent by the educational interpreter in interpreting and non-interpreting roles can be influenced by

a number of factors. Among these are local circumstances such as number of deaf students being served in the school district and their distribution across grade levels and school buildings. Another involves the qualifications and availability of the interpreting staff and other personnel. Obviously, the educational interpreter's background and skills should be considered in the assignment of non-interpreting tasks.

Also, if an educational interpreter is employed full time by the school district or institution, he or she is more likely to have non-interpreting duties than if employed on a part-time or hourly basis. This is due in part to the fact that interpreters cannot be expected to interpret continuously and without relief throughout a full school day, particularly in lecture-type classes where there is little or no respite. This will be discussed further under the topic of "Working Conditions."

Additionally, in situations where the educational interpreter works with the same teacher and class throughout the day, the educational interpreter is likely to have more non-interpreting duties than if he or she moves from class to class. The educational interpreter is most likely to have expanded roles that include non-interpreting duties at the primary and elementary levels.

It is stressed that the educational interpreter's primary role and first priority is as an interpreter. While engaged in interpreting, he or she should not be asked to interrupt this activity in order to perform some other task. Similarly, when the need arises for both interpreting and some other task, interpreting should take priority.

This does not imply that the educational interpreter, when not actually interpreting, should avoid other tasks because of the need to remain "on call" for interpreting. Judgment is required in each situation. (See also "Responsibilities and Ethical Considerations.")

Attention should be brought here to what is considered to be an inappropriate non-interpreting role for the educational interpreter. The role of the educational interpreter should *not* include classroom management, i.e., formal instruction or classroom supervision. Very few educational interpreters are also trained and certified teachers, and even if they are, may be qualified to teach only at particular grade levels and in particular content areas. If the educational interpreter's duties include tutoring, it should be under the teacher's supervision.

A quality education for deaf students who spend all or part of their school day in a mainstream educational environment depends on *services* and *people* with varied roles. An understanding of the overlapping and distinguishing roles of teacher, student, educational interpreter, parents, and others involved in the deaf student's education should be understood by all these persons.

### **Responsibilities**

An educational interpreter's responsibilities are likely to vary considerably from one work setting to another. Several factors that may lead to different responsibilities are mentioned under "Roles."

One major factor has to do with the kinds and levels of training and experience the educational interpreter brings to the task. Obviously, the educational interpreter should not be assigned responsibilities for which he or she is not qualified. By the same token, the broadly qualified educational interpreter most likely can carry out numerous responsibilities in addition to interpreting. Sign language instruction is a good example. Salary, benefits, and other working conditions should be commensurate with these responsibilities.

Written guidelines and inservice training are one way to ensure that the educational interpreter's roles and responsibilities are understood by teachers and others who make up the educational team, by the students who will be using the service, by their parents, and of course by the educational interpreter.

It is also important that a member of the educational administration staff supervise the activities of the educational interpreter. While in most instances the supervisor is unlikely to have interpreting skills, he or she should have a general knowledge of interpreting requirements. The selection of an individual depends on conditions in the local system, but in general, neither an outside agency/consultant nor a teacher in whose class the educational interpreter works is recommended as the interpreter's supervisor.

### **Interpreting Responsibilities**

The local educational authority is responsible for prescribing the mode(s) of communication to be used with deaf students. Those

mode(s) should be indicated in the interpreter's job description. It follows that it is not the interpreter's responsibility to select the mode(s) of communication to be used in class. (See also "Responsibilities and Ethical Considerations.")

As an important language model for the deaf student, the educational interpreter should be skilled in the mode(s) of communication that is/are indicated in the job description and prescribed for classroom use with the student.

Based on his or her training and experience, the educational interpreter should also be able to determine whether, and to what extent, the student understands the mode(s) of communication being used. If the student has difficulty with instructional content due to not understanding the mode(s) of communication in use, the educational interpreter should inform the appropriate member of the educational team.

"In class" interpreting. The instructional content of "in class" interpreting varies by class and level. Interpreting responsibilities at the elementary level most likely include a broad range of subject areas, such as mathematics, social studies, and the language arts, but the depth of knowledge needed by the educational interpreter in each subject area is not likely to require special technical background.

The instructional content at the secondary level takes on more depth, and may necessitate the educational interpreter's having more technical knowledge of a particular content area. For interpreting at the postsecondary level, it is important that the educational interpreter have an academic background and/or technical knowledge in one or more college-level disciplines.

In short, the depth of subject knowledge needed to interpret a third grade class in arithmetic is quite unlike that needed to interpret a course in calculus or law. It is essential that the educational interpreter have sufficient knowledge of the content to be able to interpret its concepts and vocabulary accurately and meaningfully. This is likely also to call for preparation time, e.g., to meet with the instructor, read lecture outlines, skim required readings in textbooks, and preview uncaptioned instructional videotapes.



"Out of class" interpreting. The educational interpreter's responsibilities probably will include interpreting coverage of "out of class" or extracurricular activities. These should be distinguished from other duties such as lunchroom or playground supervision and duties as a bus attendant.

Out-of-class activities are those in which the educational interpreter is present primarily to interpret for the deaf student and others outside the classroom. Such activities might include field trips, club meetings, assemblies, counseling sessions, course registrations, athletic competitions, and other school-related activities. In some school programs, interpreters may be asked to interpret for deaf parents, deaf teachers, and other deaf employees.

Out-of-class interpreting assignments requiring hours beyond the regular working hours should be compensated in some form per local policy, e.g., stipend, compensation time off, or overtime. Volunteer activities are at the discretion of the educational interpreter.

### **Non-Interpreting Responsibilities**

Educational interpreters should not be asked to assume responsibility for duties for which they do not have the needed training and/or background knowledge. In these cases, time may need to be set aside by the interpreter and other appropriate staff for "on-the-job" training and/or support for the interpreter to take workshops and other formal training elsewhere.

Tutoring. Programs that offer special tutoring services to their deaf students frequently use educational interpreters to provide this service. However, as of 1989, very few interpreters had received special training for tutoring.

If tutoring is part of an educational interpreter's responsibilities, it should be carried out under the direct supervision of the teacher, since the teacher ultimately is responsible for teaching and assessing student progress.

The educational interpreter and the deaf student are more likely to be able to communicate directly with one another than are other

members of the educational staff with the same student, and of course this is very important in tutoring.

Communication notwithstanding, the educational interpreter's ability to tutor effectively depends also on the interpreter's level of knowledge about the subject matter being covered. In this respect, at least, tutoring may indeed be easier to do at the elementary level than at the secondary level, and easier at the secondary level than at the postsecondary level where the interpreter may not have indepth knowledge of the course content. For this reason, among others, it is more common to include tutoring among the responsibilities of educational interpreters at the K-12 levels than at the postsecondary level.

General classroom assistance. The presence of a deaf student in the regular class most likely adds to the work of the teacher, particularly at the elementary level where the student can be quite dependent on the teacher for special attention and assistance. At times when their services are not needed for interpreting, educational interpreters may volunteer or be asked by the teacher to assist with some of the more routine classroom duties, particularly when the interpreter is assigned to the same teacher and class for most or all of the school day.

This potentially sensitive area for both teacher and interpreter should be closely monitored by the supervisor. For the protection of both teacher and interpreter, and for the maintenance of a positive classroom climate, there must be a good understanding between both as to the level and kind of general classroom assistance the educational interpreter can provide the teacher and class without interfering with his/her primary responsibility for interpreting. In this context, it is emphasized that the educational interpreter should be prepared to interrupt other classroom activities when interpreting services are needed. (See also "Responsibilities and Ethical Considerations.")

Under no circumstances should the educational interpreter take on the responsibility of the teacher for management of the class.

Sign language instruction. Educational interpreters frequently are asked to assume an instructional role in teaching sign language to groups of students and school staff members. The usual preparation and certification for interpreting does not cover this area of responsibility, and most interpreters, while capable of providing informal instruction for



enrichment, are not well prepared to teach formal sign language courses. However, training and several levels of certification in sign language instruction are available through the Sign Instruction Guidance Network (SIGN) of the National Association of the Deaf, and the educational interpreter might be encouraged to make this a part of his or her professional development plan.<sup>1</sup>

**Educational planning.** The educational interpreter's responsibilities should include provisions for what might be called "educational planning". This includes time that is set aside for the educational interpreter and teacher to discuss course content, lesson plans, upcoming tests, etc., in order to coordinate educational planning for the deaf student. At the elementary level, where the educational interpreter is likely to be working with the same teacher and class over the year, these meetings should be scheduled on a regular basis, particularly if the interpreter's educational duties include tutoring and/or general classroom assistance.

Educational planning should also include provisions for "preparation time" — time to preview textbooks and other instructional materials, to become oriented to subject content and vocabulary and to selected vocabulary signs, etc. — to enable the interpreter to prepare a better interpretation. (See also "Schedule.")

Reference was made earlier about the need for continuing skill development by the educational interpreter, much of which needs to be on an inservice basis as part of educational planning. This remains essential until more interpreter preparation programs provide the curriculum to prepare interpreters to work as specialists in the educational setting.

### **Responsibilities and Ethical Considerations**

In 1979, the Registry of Interpreters for the Deaf (RID) developed a Code of Ethics, consisting of eight principles and a series of guidelines. This code was developed essentially for general situations

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<sup>1</sup> For more information, write SIGN, National Association of the Deaf, 814 Thayer Avenue, Silver Spring, Maryland 20910.

involving deaf adults as clients, without reference to interpreting for children or interpreting in educational settings (Frishberg, 1986)<sup>2</sup>.

As might be expected, the RID Code of Ethics has more immediate relevance to interpreting for deaf adults than for deaf children, and for students enrolled in postsecondary and continuing education classes than for those enrolled at the elementary or secondary levels. Educational interpreters, therefore, frequently express concerns about the applicability of particular principles of the RID Code to educational situations.

One of these principles stresses the importance of keeping all assignment-related information strictly confidential. This important aspect of the client-interpreter relationship generally applies to the student-interpreter relationship as well. A climate of trust should be maintained between interpreter, teacher, and student. Interpreters should be careful not to damage that trust by critiquing teachers' classroom behaviors to outside parties.

As with many ethical guidelines, exceptions to the confidentiality principle may occur, particularly when the safety and welfare of a child or adolescent are involved. For example, as a member of the educational team, the interpreter should exercise judgment in sharing information that is relevant to a deaf student's educational progress with other members of the team and his or her supervisor. In this regard, educational interpreters must be aware of, and adhere to, policies and procedures established by the district for its employees.

The RID Code also indicates that the interpreter should interpret in the language most readily understood by the person(s) whom he or she is serving. However, in the educational setting, it is the responsibility of school administrators, not interpreters, to determine the language to be used. If it is clear to the educational interpreter that the student is deriving little information from the prescribed form of communication, with consequences for that student's educational

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<sup>2</sup> Frishberg, N, (1986), Interpreting: An Introduction, Silver Spring, Maryland: RID Publications.

development, the interpreter should feel free to discuss this with other members of the educational team and his or her supervisor.

The RID Code of Ethics addresses interpreting assignments only. It does not cover the additional responsibilities that are so common among educational interpreters. Some educational interpreters infer from this that the RID Code discourages interpreters from assuming responsibilities in the school beyond interpreting. It does not.

The prevailing opinion among educational interpreters serving students at all educational levels is that the RID Code of Ethics offers useful guidance. With some adaptations and the insertion of guidelines that more closely reflect needs and circumstances within various educational settings serving deaf students, the Code can provide an appropriate foundation of ethical principles for educational interpreters.